IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2066 OF 2004

Smt.M.J.Shreemathy ...Petitioner

Versus

The State of Maharashtra & Anr. ...Respondents

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Mr.S.G.Deshmukh for Petitioner.

Mr.K.V.Saste, A.P.P. for Respondent No.1.

Mr.Rayu Govind Mahambre, Respondent No.2 present in-person.

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CORAM: A.M.KHANWILKAR, J.

NOVEMBER 30, 2004.

P.C.

1. Heard Counsel for the Petitioner and Respondent No.2 Complainant, who appears in person.

2. The order which is impugned in this Petition is passed in the pending appeal before the Sessions Judge, Palghar dated 2nd September 2004. By that order, the Sessions Judge has directed the

Petitioner to deposit total amount of Rs.2,22,500/- (Rupees Two Lakhs Twenty-two Thousand Five Hundred) within one month from the date of the said order. The grievance of the Petitioner before this Court is that the same Court had, in earlier point of time, granted complete stay to the sentence and conviction order passed against the Petitioner on 30th June 2004 and having granted that relief, it was not open to the Appellate Court to entertain the application preferred by the Respondent No.2 or for that matter, to grant relief, as has been granted in the impugned order. This submission, clearly overlooks the fact that the order passed on 30th June 2004 in favour of the Petitioner, was an ex-parte order. The Respondent No.2/complainant was not heard in the matter. Moreover, no reason has been recorded by the Appellate Court for granting the relief of suspending the sentence and conviction, as was done under order dated 30th June 2004, inspite of the requirement of Section 389 (1) of the Criminal Procedure Code, 1973 in that behalf. In this backdrop, the Respondent No.2 applied before the Appellate Court to pass appropriate orders during the pendency of appeal,

including to require the Petitioner to deposit the entire amount in terms of the settled legal position. On that application, the Appellate Court proceeded to direct the Petitioner to deposit sum of Rs.2,22,500/- (Rupees Two Lakhs Twenty-two Thousand Five Hundred), although the fine amount specified by the Trial Court is Rs.21,80,000/- (Rupees Twenty-one Lakhs Eighty Thousand).

3. Viewed in this perspective, there is no case for interference in exercise of writ jurisdiction. The order which is impugned in this Petition, is a discretionary order and the lower Court has exercised discretion, by recording good reasons in the impugned order. To get over this position, learned Counsel for the Petitioner contends that no reason has been recorded by the Court below, as to why the Petitioner is directed to deposit sum of Rs.2,22,500/- (Rupees Two Lakhs Twenty-two Thousand Five Hundred). This submission overlooks that the total amount payable as fine imposed by the Trial Court is Rs.21,80,000/- (Rupees Twenty-one Lakhs Eighty Thousand) and as per the settled legal position, the complainant

would be justified in contending that the Petitioner be directed to deposit the said amount, as condition for grant of any interim relief. Nevertheless, the Court below has shown indulgence to the Petitioner by requiring him only to deposit portion of the said amount being Rs.2,22,500/- (Rupees Two Lakhs Twenty-two Thousand Five Hundred) only.

4. In the circumstances, it is not a case of improper exercise of discretion by the Court below. Learned Counsel vehemently argued that on merits, the Petitioner has good case. However, it is not possible to go into the contentions to record a finding on merits. That cannot be the scope of the present Petition. Hence, dismissed.

5. At this stage, Counsel for the Petitioner prays that the Petitioner be granted time to deposit the amount before the Court below in terms of the directions in the impugned order. Two weeks time is granted, as prayed.

6. Application disposed of on the above

terms.

A.M.KHANWILKAR, J.

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